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Comptroller General
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Decision

Matter of: SDS International

File: B-285821

Date: September 21, 2000

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David R. Johnson, Esq., and Michael K. Murphy, Esq., Gibson, Dunn & Crutcher, for NLX Corporation, the intervenor.
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Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. New and independent grounds of protest included in a protester's comments on the agency report must independently meet the timeliness requirements of the General Accounting Office's Bid Protest Regulations; extensions of time for filing comments do not waive the timeliness requirements.
 2. Contracting agencies are not obligated to afford all-encompassing discussions that "spoon-feed" an offeror each item that must be addressed to improve a proposal; agencies are only required to lead offerors into the areas of their proposals considered deficient and requiring amplification.
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DECISION

SDS International protests the award of a contract to NLX Corporation under request for proposals (RFP) No. F44650-00-R-0004, issued by the Department of the Air Force for F-4 aircrew training and courseware development for the German Air Force contingent assigned to Holloman Air Force Base, New Mexico. SDS argues that the agency improperly failed to conduct meaningful discussions with SDS and maintains that the agency's best value determination was flawed.

We deny the protest.

BACKGROUND

The RFP, issued March 7, 2000 as a total small business set-aside, contemplated the award of a fixed-priced contract for a phase-in period, a base year, and up to four 1-year option periods. The statement of work (SOW) divided the specific tasks into three categories (1) contract aircrew training (CAT), (2) courseware development (CWD), and (3) general tasks. The RFP listed past performance, mission capability, risk, and price as evaluation factors, with the past performance and mission capability factors considered of “primary and equal importance.” SOW § 9, ¶ 1, at 22. Within the mission capability factor, the RFP also listed the following three subfactors in descending order of importance: program and workload management (PWM), instructional systems development (ISD) management plan, and phase-in. The RFP explained that in assessing each offeror’s past performance, evaluators would assign an adjectival rating ranging from “unsatisfactory/no confidence” to “exceptional/high confidence.” The RFP further explained that each subfactor within the mission capability area would be assigned a color and adjectival rating (red/unacceptable, yellow/marginal, green/acceptable, or blue/exceptional). Proposals would also be assigned risk ratings at the subfactor level (low, moderate, or high) to reflect the strengths and weaknesses associated with each offeror’s proposed approach. The RFP stated that price would not be numerically scored but would be evaluated for reasonableness. Award was to be made to the offeror whose proposal was determined to be most advantageous to the government.

Five offerors, including SDS and NLX, responded to the RFP by the time set on April 7 for receipt of initial proposals. A source selection evaluation team (SSET) evaluated proposals; the agency conducted discussions; and the SSET reevaluated final proposal revisions, with the following results for the protester and the awardee:

		Mission Capability			
	Past Perf./Conf.	PWM/Risk	ISD/Risk	Phase-in/Risk	Price
SDS	Very Good/Sign.	Green/Mod.	Blue/Low	Green/Low	\$3,749,321
NLX	Very Good/Sign.	Green/Low	Blue/Low	Green/Low	3,851,160

Agency Report (AR) at 2; and AR exh. 13, Proposal Evaluation Report (PER), attach. 2, Rating Team Worksheets.

Based on the results of the final evaluation the SSET recommended that NLX be awarded the contract. In reviewing that recommendation, the contracting officer (CO), who was the source selection authority (SSA) for this procurement, noted that SDS’s and NLX’s proposals were highly rated and, with the exception of the risk rating under the PWM subfactor, both proposals earned identical ratings across all evaluation factors. The SSA noted that the primary difference between NLX’s and

SDS's proposals was the [DELETED]. In this regard, the SSA found that [DELETED]. Noting this difference, as well as other strengths the evaluators identified in NLX's proposal, the SSA concluded that NLX's proposal was most advantageous to the government, and awarded the contract to that firm. This protest followed a debriefing by the agency.

PROTEST ISSUES

In its initial protest, SDS primarily challenged the evaluation of its proposal under the PWM subfactor, arguing that the "moderate" risk rating assigned its proposal was inconsistent with the agency's evaluation of SDS's performance on another recent contract for CAT services and with the RFP's criteria. Specifically, SDS maintained that "[g]iven the record and the evaluation criteria set forth in the RFP, [the agency] had no basis to assign SDS less than a 'Green/Low' rating for the PWM plan." Protest at 18. SDS also argued that in evaluating its proposed [DELETED], the agency applied undisclosed evaluation criteria. In this connection, SDS argued that its "[DELETED] be considered minimal unless [the agency] has additional workload requirements that are not disclosed in the solicitation." *Id.* at 22. The agency responded to these allegations in its report, and the protester does not take issue with the agency's position in this regard. Accordingly, we consider these issues abandoned. See Rockwell Int'l Corp., B-261953.2, B-261953.6, Nov. 22, 1995, 96-1 CPD ¶ 34 at 12 n.14.

In its comments, SDS asserts for the first time that the evaluation of competing proposals under the past performance subfactor was unreasonable. In this connection, SDS argues that "SDS and NLX were accorded the same 'Very Good' past performance rating even though SDS has significant successful past performance of CAT and CWD contracts while NLX does not." Protester's Comments at 13. SDS also argues that the agency's performance risk evaluation was flawed. In this connection, SDS asserts that the CO "improperly credited NLX with a performance risk advantage that was not provided for in NLX's [DELETED] proposal, and which was improperly imputed to NLX from SDS's creative [DELETED]." *Id.* at 15. As explained below, these new arguments are untimely raised.

Under our Bid Protest Regulations, protests not based upon alleged solicitation improprieties must be filed not later than 10 days after the basis for protest is known. 4 C.F.R. § 21.2(a)(2) (2000). Where a protester initially files a timely protest and supplements it with new and independent grounds of protest, the new allegations must independently satisfy these timeliness requirements; our Regulations do not contemplate the unwarranted piecemeal presentation of protest issues. Litton Sys., Inc., Amecom Div., B-275807.2, Apr. 16, 1997, 97-1 CPD ¶ 170 at 4 n.1. Here, while SDS's initial protest was filed in a timely manner, SDS did not challenge the evaluation of proposals under the past performance subfactor, nor did it challenge the CO's performance risk assessment on the grounds SDS asserts in its comments. SDS was aware of these bases of protest, at the latest, upon its receipt of

the agency report on August 16, but did not raise these new issues within 10 days after SDS received the report. SDS's comments, filed on August 30, were not filed within the 10-day period prescribed by our Regulations, because we granted SDS's request for an extension of time within which to file them. See 4 C.F.R. § 21.3(i). An extension for purposes of filing comments, however, does not waive the timeliness rules with regard to new grounds of protest. SDS Petrol. Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 3-4 n.3. Accordingly, these new protest issues are untimely, and will not be considered.¹

There are two other issues which were timely raised in SDS's initial protest. First, SDS alleges that the agency failed to conduct meaningful discussions with the firm. According to the protester, had the agency conducted proper discussions regarding its [DELETED] concerns, SDS could have either changed its [DELETED] or provided additional information to allay the evaluators' concerns. Second, SDS challenges the agency's best value determination.²

¹ In supplemental rebuttal comments, SDS argues that its challenge to the past performance rating assigned NLX's proposal was timely raised because it first learned of this protest basis upon receipt, on August 24, of the agency's response to SDS's supplemental document request, which SDS maintains contained debriefing materials related to a different procurement concerning NLX's performance history. The record clearly shows, however, and SDS concedes, that the PER provided to SDS with the initial agency report for the instant procurement contained the evaluation of NLX's performance history under this RFP, accompanied by a narrative explanation of the agency's rationale supporting the past performance rating assigned NLX's proposal. AR exh. 13, PER, at 6; and attach. 2. The debriefing materials subsequently provided to SDS in response to the supplemental document request contain virtually identical information to that in the PER for this procurement. Thus, to be timely, SDS was required to raise its arguments concerning the evaluation of NLX's past performance within 10 days of its receipt of the agency report. Further, as explained below, the evaluation of NLX's proposal under another, unrelated procurement involving different aircraft is irrelevant to determining the reasonableness of the evaluation here.

² SDS also argues that the evaluation of its proposal under this RFP was inconsistent with the evaluation of a virtually identical proposal it submitted under a different RFP, also issued by the Air Force for CAT and CWD services involving different aircraft. The agency responds that these were distinct procurements, each with independent evaluation teams, SSAs, and separate operating environments particular to the weapons systems for which the services are required. In this regard, we do not find it unusual or improper that different evaluators have different perceptions of the merits of proposals, especially where, as here, the work involves different aspects of the program. See, e.g., SRS Tech., B-270341.2, Mar. 1, 1996, 96-1CPD ¶ 120 at 4 n.4; Centex Constr., Co., Inc., B-238777, June 14, 1990, 90-1 CPD ¶ 566 at 6. Moreover, each acquisition stands on its own, and the evaluation and relative

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ANALYSIS

Discussions

SDS's proposal was downgraded for [DELETED]. Specifically, in its initial proposal, SDS [DELETED]. The evaluators were concerned with this approach, noting that if [DELETED]. The protester maintains that had the agency raised this specific concern, SDS could have either changed its proposal or provided additional information to allay the evaluators' concerns.

While agencies generally are required to conduct meaningful discussions by leading offerors into the areas of their proposals requiring amplification, this does not mean that an agency must "spoon-feed" an offeror as to each and every item that must be revised or otherwise addressed to improve a proposal. LaBarge Elecs., B-266210, Feb. 9, 1996, 96-1 CPD ¶ 58 at 6.

The record shows that after evaluating initial proposals, the agency conducted written discussions by providing evaluation notices (EN) to all offerors whose proposals were retained within the competitive range, including SDS. For each evaluation factor or subfactor, the ENs requested clarifications, identified deficiencies in the proposals, and requested offerors to address specific questions. As relevant here, two of the ENs submitted to SDS stated as follows:

[DELETED]. Please address this concern.

[DELETED]?

AR, exh. 10, Memorandum for SDS, Apr. 25, 2000, attach.

In view of the evaluators' concern over SDS's proposed [DELETED], it is clear that the ENs, which notified SDS of the specific concern, reasonably led the firm into the area of its proposal identified as a deficiency and in need of amplification or correction. The protester was clearly placed on notice that the evaluators found that its proposed [DELETED] would be overtasked with responsibilities, and was asked to address this concern. In fact, the record shows that SDS understood the agency's concern and increased its [DELETED] in its final proposal revision. Based on our review of the record, it is clear that although the agency provided SDS with an

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ranking of SDS's proposal under another procurement are irrelevant to determining the reasonableness of the evaluation here. See Renic Corp., Gov't Sys. Div., B-248100, July 29, 1992, 92-2 CPD ¶ 60 at 5. We note that SDS has filed separate protests challenging the evaluation of its proposal under the other solicitation, and we anticipate addressing SDS's contentions in a separate decision.

opportunity to address the SSET's concern and, the firm, in fact, did so in its final proposal revision, SDS simply failed to respond with sufficient [DELETED] to allay the evaluators' specific concern.

Best Value Determination

SDS's contention that the agency's best value determination was flawed is predicated on the assumption that the award decision was defective because it resulted from defective underlying technical evaluations. As already explained, SDS abandoned the issue concerning the evaluation of its proposal under the PWM subfactor, and raised other untimely issues regarding the underlying evaluation which will not be considered. Accordingly, we have no basis to object to the agency's award decision on the grounds asserted by SDS.

The protest is denied.

Anthony H. Gamboa
Acting General Counsel